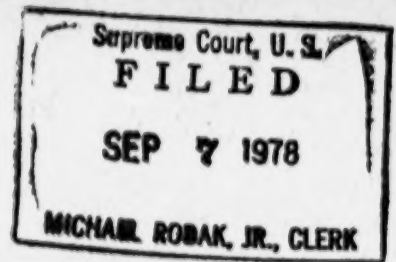


No. 78-149



In the Supreme Court of the United States

OCTOBER TERM, 1978

KENNETH WAYNE WALLS, PETITIONER

v.

UNITED STATES OF AMERICA

*ON PETITION FOR A WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR
THE NINTH CIRCUIT*

**MEMORANDUM FOR THE UNITED STATES
IN OPPOSITION**

WADE H. MCCREE, JR.,
*Solicitor General,
Department of Justice,
Washington, D.C. 20530.*

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Following a jury trial in the United States District Court for the District of Arizona, petitioner was convicted of mail fraud, in violation of 18 U.S.C. 2 and 1341, and transporting money in interstate commerce that had been taken by fraud, in violation of 18 U.S.C. 2 and 2314. He was sentenced to a term of five years' imprisonment and fined \$5,000. The court of appeals affirmed (577 F. 2d 690; Pet. App. A).

On February 28, 1978, petitioner's bail was revoked in another federal criminal proceeding and a bench warrant was issued for petitioner's arrest due to his failure to appear at his scheduled trial date in that proceeding. That warrant has not been executed because petitioner is presently a fugitive. Additionally, the court of appeals, on June 28, 1978, in its opinion affirming petitioner's

conviction in the present matter, revoked petitioner's release on bail (Pet. App. A 15-16). Since petitioner is now a fugitive, he is not entitled to call upon this Court for determination of his claims. *Molinaro v. New Jersey*, 396 U.S. 365.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.,
Solicitor General.

SEPTEMBER 1978.